

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:

**JACK CHARLES THOMPSON and
SHARON LUCILLE THOMPSON**

DEBTORS.

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CASE NO. 03-92057-DML-7

MEMORANDUM OPINION AND ORDER

Before the court is the Trustee's Objection to Exemptions and Motion for Turnover of Property of the Estate (the "Motion") filed by the Chapter 7 Trustee (the "Trustee"), John Dee Spicer, on February 5, 2004. The court also has before it Debtors' response to the Motion. On March 4, 2004, the court held a hearing on the Motion in which the Trustee and Debtors participated.

This matter is subject to the court's core jurisdiction pursuant to 28 U.S.C. §§ 1334(a) and 157(b)(2)(B) and (E). This memorandum opinion constitutes the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and 9014.

I. Background

Pursuant to section 302(a) of the Bankruptcy Code (the "Code"),¹ Debtors jointly filed their voluntary chapter 7 petition on December 19, 2003. Prior to filing their petition, Debtor Jack Charles Thompson's ("Jack Thompson") inherited from his parents an interest in property located at 2707 Conrad Drive, Arlington, Texas (the "Conrad Property"). Debtor Sharon Lucille Thompson ("Sharon Thompson") has no interest in the Conrad Property.

¹ 11 U.S.C. §§ 101 *et seq.* Hereinafter, unless otherwise indicated, references to a "section" shall refer to the corresponding provision of the Code.

Debtors listed a “1/3 equitable interest” in the Conrad Property in their Schedule A and valued the interest as \$19,000. Debtors also listed the Conrad Property in Schedule C as exempt pursuant to section 522(d)(5) and valued the exemption as \$19,000.² On February 5, 2004, the Trustee filed the Motion by which he asks the court to disallow Sharon Thompson’s share of the exemption of the Conrad Property.

II. Parties’ Positions

Debtors’ position is that Debtors may each utilize the full exemption allowed pursuant to section 522(d)(5) to protect Jack Thompson’s interest in the Conrad Property though it is his separate property and Sharon Thompson has no interest in it.

The Trustee’s position is that each Debtor may use the exemption provided pursuant to section 522(d)(5) to protect the Conrad Property, but only to the extent of each Debtor’s individual interest in that property. Since the Conrad Property is Jack Thompson’s separate property, Sharon Thompson has no interest in the Conrad Property. Thus, the Trustee argues, Sharon Thompson’s “wildcard” exemption under section 522(d)(5) cannot be used to protect the Conrad Property.

The facts in this case not being in dispute, the court must decide whether Sharon Thompson may utilize section 522(d)(5) to protect the Conrad Property though she has no interest in the property.

² On January 26, 2004, Debtors filed amended schedules in which Debtors restated the value of the “equitable interest” in the Conrad Property as \$22,233.33 and the value of the exemption on the Conrad Property as \$17,842.17. Evidence has not been presented as to valuation of the Conrad Property or Debtors’ homestead. Other than as discussed below, valuation is not relevant to the issue before the court.

III. Discussion

Any analysis of the Code must begin with the language of the statute itself and, if the meaning is plain, the court must enforce the statute consistent with such meaning unless to do so would lead to an absurd result. *See Lamie v. United States Trustee*, 124 S. Ct. 1023, 1030 (2004) (stating that when the language of a statute is plain and does not lead to an absurd result, the sole function of the court is to enforce the statute according to its terms); *Toibb v. Radloff*, 501 U.S. 157, 162 (1991) (holding that where resolution of a question of law turns on a statute, courts must look first to the statutory language); *Union Bank v. Wolas*, 502 U.S. 151, 158 (1991) (stating that the courts must give effect to a statute's plain meaning).

To begin, section 522(m) states that section 522 “shall apply *separately* with respect to *each* debtor in a joint case.” (Emphasis added.) Thus, Jack Thompson and Sharon Thompson are each *separately* entitled to the exemptions provided in section 522(d). *See Augustine v. United States*, 675 F.2d 582, 585 (3rd Cir. 1982); *In re Cohen*, 263 B.R. 724, 726-27 (Bankr. D.N.J. 2001); *In re Burnett*, 241 B.R. 438, 440 (Bankr. E.D. Ark. 1999); *In re Szydlowski*, 186 B.R. 907, 910 (Bankr. W.D. Ohio 1995).

Next, section 522(d)(5), the “wildcard” exemption, provides an exemption for “[t]he *debtor's aggregate interest* in any property, not to exceed” a certain value.³ (Emphasis added.) The “wildcard” exemption is only allowed to the extent of the debtor's interest in the property such debtor seeks to exempt from the bankruptcy estate. *See Cohen*, 263 B.R. at 726-27. *See also* BANKR. EXEMPTION MANUAL § 5.06 (2003)

³ The phrase in section 522(d)(5) which states, “not to exceed in value \$975 plus up to \$9,250 of any unused amount of the exemption provided under paragraph (1) of this subsection,” merely defines the maximum value of the exemption.

(stating that a debtor must have an interest in the property that debtor seeks to exempt pursuant to section 522(d)(5)). Thus, because Sharon Thompson has no interest in the Conrad Property, she may not utilize section 522(d)(5) to exempt the Conrad Property from her bankruptcy estate.

This reading of section 522 is consistent with section 302(b), which states, “After commencement of a joint case, the court shall determine the extent, if any, to which the debtors’ estates shall be consolidated.” Absent consolidation, each debtor in a joint case has a separate estate consisting only of property in which such debtor has an interest. *Cohen*, 263 B.R. at 726. In the context of exemptions, an interest in property implies a monetary interest. *Cohen*, 263 B.R. at 726 (citing *In re Cunningham*, 5 B.R. 709, 711 (Bankr. D. Mass. 1980) and *In re Hartman*, 211 B.R. 899, 903 (Bankr. C.D. Ill. 1997)). Because Sharon Thompson has no monetary interest in the Conrad Property, it cannot be included in her bankruptcy estate for the purpose of carving out her exemptions. The Conrad Property cannot, therefore, be exempted from her bankruptcy estate.

It is well settled that exemptions are to be liberally construed. *See Milligan v. Evert (In re Evert)*, 342 F.3d 358, 366 (5th Cir. 2003); *In re Kane*, 127 F. 552, 553 (7th Cir. 1904); *Hyman v. Stern*, 43 F.2d 666, 667 (4th Cir. 1930); *In re Russell*, 80 B.R. 662, 663-64 (Bankr. D. Vt. 1987); *Smith v. Bank of Glenwood (In re Smith)*, 8 B.R. 375, 378 (Bankr. S.D. Cal. 1980). However, liberal construction does not permit a court to extend the protection of an exemption “when doing so would contradict the plain and unambiguous language of the statute.” *Garran v. SMS Fin. V, LLC (In re Garran)*, 338 F.3d 1, 6 (1st Cir. 2003). Sharon Thompson may not utilize section 522(d)(5) to protect the Conrad Property since language of the statute is clear and unambiguous.

IV. CONCLUSION

For the above stated reasons, the Motion is GRANTED to the extent that Sharon Thompson's exemption of an interest the Conrad Property is hereby DISALLOWED.

It is therefore

ORDERED that Debtors shall amend their schedules to conform herewith.

Signed this _____ day of May 2004.

DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE